

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

MATHEW MARTOMA,

Defendant.

No. 12-cr-00973 (PGG)
ECF Case

**DECLARATION OF RICHARD M. STRASSBERG IN SUPPORT OF
DEFENDANT MATHEW MARTOMA'S MEMORANDUM OF LAW
IN OPPOSITION TO THE GOVERNMENT'S MOTION *IN*
LIMINE TO ADMIT THE RESEARCH ANALYST 404(B) MATERIAL**

I, Richard M. Strassberg, declare under penalty of perjury as follows:

1. I am a member of the law firm of Goodwin Procter LLP, attorneys for Defendant Mathew Martoma in this action. I have personal knowledge of and am fully familiar with the facts and circumstances set forth herein by virtue of both my representation of Mr. Martoma and my review of the case file in this action. I submit this declaration in support of Mr. Martoma's Memorandum of Law in Opposition to the Government's Motion *in limine* to Admit the Research Analyst 404(b) Material.

2. On November 12, 2013 at 1:15pm EST, I sent an email to Arlo Devlin-Brown and Eugene Ingoglia proposing that the Government "provide the defense with notice via email or phone if it intends to offer any 404(b) evidence, and if so, the specific evidence it will seek to offer under Rule 404(b) [sic]." On November 12, 2013 at 9:27pm EST Arlo Devlin-Brown responded to me via email, agreeing to provide the defense on November 22, 2013, "with notice of any 404(b) evidence then known to [the Government], with the specificity that is required by the rule." The Government also stated, "We reserve the right to seek to admit 404(b) evidence

we identify after November 22nd (and you reserve the right to oppose on lack of notice or any other ground).”

3. On November 18, 2013 at 4:37pm EST I emailed Arlo Devlin-Brown and Eugene Ingoglia proposing that the Government provide the agreed upon Rule 404(b) notice at 2pm EST on November 22, 2013. Later that evening on November 18, 2013 at 5:39pm EST Arlo Devlin-Brown sent an email to me confirming the Government would provide the Rule 404(b) notice by November 22, 2013 at 2pm EST.

4. On November 22, 2013 at approximately 2pm EST the parties met and conferred to discuss the 404(b) evidence that the Government intended to offer, and there was no mention of 404(b) Material related to Mr. Martoma’s research analyst (“Research Analyst”).

5. On December 11, 2013 Arlo Devlin-Brown and Eugene Ingoglia sent a letter to me attaching 3500 material related to the Research Analyst. The 3500 material indicates that the Government interviewed the Research Analyst on February 1, 2012 and November 3, 2013.

6. Attached hereto as Exhibit A is a true and correct copy of an email sent on December 13, 2013 at 6:06pm EST from Eugene Ingoglia to me, Roberto Braceras and Larkin Morton providing notice that the Government intends to file a motion with the Court seeking to introduce 404(b) evidence related to the Research Analyst (“Research Analyst 404(b) Material”). The identity of the Research Analyst specified therein has been redacted.

7. On December 13, 2013 at 7:23pm EST Arlo Devlin-Brown sent an email to me, Roberto Braceras and Larkin Morton attaching additional 3500 material related to the Research Analyst consisting of two pages of handwritten notes which do not identify the doctor, the drug, or the clinical trial about which the Government seeks to offer evidence. This 3500 material indicates that the Government interviewed the Research Analyst on December 9, 2013.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on December 20, 2013
New York, NY

/s/ Richard M. Strassberg
Richard M. Strassberg (RS5141)

CERTIFICATE OF SERVICE

I hereby certify that on December 20, 2013, I caused a true and correct copy of the foregoing to be served by electronic means, via the Court's CM/ECF system, on all counsel registered to receive electronic notices. I also certify that I have caused copies of the aforementioned document to be served via first class mail, postage prepaid upon all non-CM/ECF participants.

/s/ Richard M. Strassberg
Richard M. Strassberg (RS5141)